IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

DISTRICT:

CIVIL APPLICATION NO. 2309 OF 2006

IN

FIRST APPEAL (St.) NO. 10900 OF 2002

Office Notes,Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders
	Mr.Bolinjkar i/by Mr. K.K.Malpathak for the Applicants. Mr.G.H.Keluskar for Respondent Nos.1 to 7. Mr. A.R.Patil, AGP for State. **CORAM: S.B.DESHMUKH, J.** **DATE : 13TH SEPTEMBER 2006** **P.C.:** Heard learned Counsel for the parties. 2. By this application, the applicants are seeking leave to file appeal in this court, challenging the judgement and order passed by the learned District Judge in an application under Section 72 of the Bombay Public Trust Act, 1950.

3. Learned Counsel for the applicants, has invited my attention to the order passed by the learned Assistant Charity Commissioner, Ratnagiri, in Inquiry No. 296 of 1994. It appears that it was an application filed under Section 50(A)(1) of the Bombay Public Trust Act, 1950 (hereinafter referred to as "the Act of 1950" for short). The said application was filed by one Rajaram Pandabarao Chavan. The learned Assistant Charity Commissioner, after hearing the parties, framed Scheme by the order passed on 13th February, 1998. This order was challenged by filing application under Section 72 of the Act of 1950 before the learned District Judge. It was Civil Miscellaneous Application No. 11 of 1998. This application, after hearing parties, is allowed by the learned District Judge, Ratnagiri, by the judgment and order passed on 29th January, 2000 modifying the mode of

succession regarding trusteeship and payment of Rs.50/- for membership. After setting aside the order passed by the learned Assistant Charity Commissioner, in this respect, the learned District Judge had given powers of appointment of nine trustees from the devotees to the learned Assistant Charity Commissioner for the period of three years. In short, the procedure, settled in the earlier scheme, of election for trusteeship is quashed and set aside and substituted by selection by the learned Assistant Charity Commissioner, by the order passed by the District Judge, Ratnagiri under Section 72 of the Act of 1950. This order is challenged by the present applicants by filing the first appeal in this Court on 2nd April, 2002.

4. Learned Counsel for the respondent nos. 1 to 7, has filed reply in this civil application. According to him, the applicants are not personally affected by the judgment and order

passed by the learned District Judge in Civil Misc. Application No. 11 of 1998 and, therefore, no case for grant of leave for filing appeal is established. He has also invited my attention to page 13 of the reply affidavit, showing that the present applicants were present at the general election held on 12th September, 2001. According to him, the applicants were aware about the order passed by the learned District Judge on 29th January, 2000. Despite this fact, they have filed this application and the first appeal after about one year.

5. Undisputed fact, is that, Shree Padmavati Devasthan Marg Tamhane is a registered public trust, registered with the Assistant Charity Commissioner. The applicants have stated in their application that initially scheme was settled in the year 1951 by their ancestral. They have also alleged that trustees, initially, were being selected from the family of the applicants.

According to him, they were not joined as a party to the proceedings before the learned Assistant Charity Commissioner and/or before the learned District Judge where the application under Section 72 of the Act of 1952 was pending.

6. While granting leave, in favour of the person(s), who was not party to the proceedings, this Court is considering the fact as to whether party seeking leave is personally affected by the judgment and decree passed by the trial Court. In case, party seeking leave, is establishing that the said party is adversely affected by the judgment and decree, normally, this Court is granting leave to file appeal, despite the fact that such party, was not party to the proceeding, decision of which is challenged in the appeal. In the present case, application under Section 50A, was directed to be filed by the learned Assistant Charity Commissioner through one of the

surviving trustee and then, the said application was entertained and allowed by the Assistant Charity Commissioner. Scheme was settled under Section 50A of the Act of 1950 for smooth administration of the trust concerned. Mode of succession, accepted by the Assistant Charity Commissioner was of election. Usually, while considering the application, of the applicants, interest of the trust needs to be taken into consideration. It is not necessary that in such application, person seeking leave needs to point out adverse consequences of the order in relation to such person. The interest of the trust in such matters needs to be taken into consideration by the Court, while considering the application for settling the scheme under Section 50A of the Act of 1950. Sub-Section 4 of Section 50A of the Act of 1950, lays down that such modified scheme by the Authority under Section 72, becomes a decree of the civil court, which can be executed

under sub-section 3 of Section 50A of the Act of 1950. In this view of the matter, in my view, in the interest of justice, such leave needs to be granted in favour of the applicants to challenge the judgment and order passed by the District Judge, Ratnagiri in Civil Misc. Application No. 11 of 1998.

7. In this view of the matter, civil application is allowed in terms of prayer clause (a) and is disposed of accordingly.

Sd/-

(S.B.DESHMUKH, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

DISTRICT:

CIVIL APPLICATION NO. 2713 OF 2006

IN

FIRST APPEAL (St.) NO. 10900 OF 2002

Office Notes,Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders
	Mr.Bolinjkar i/by Mr. K.K.Malpathak for the Applicants. Mr.G.H.Keluskar for Respondent Nos.1 to 7. Mr. A.R.Patil, AGP for State. **CORAM: S.B.DESHMUKH, J.** **DATE : 13TH SEPTEMBER 2006** **P.C.:** Heard learned Counsel for the parties. Perused the application and reply filed on behalf of respondent

nos.1 to 7. Respondent nos.8 to 10 are, though served, absent.

2. By this application, the applicants are seeking condonation of about two years delay caused in filing the first appeal in this Court challenging the judgment and order passed by the District Judge, Ratnagiri, in Civil Misc. Application No. 11 of 1998.

3. The applicants, have alleged in the application that the Trust concerned, namely, Shree Padmavati Devasthan Marg Tamhane, is a registered public trust, registered somewhere in the year 1980. The Civil Misc. Application No.11 of 1998 was filed by the surviving trustees, as per the directions given by the Assistant Charity Commissioner and the same has been decided on 29th January, 2000. Thereafter, matter was carried to the learned District Judge by filing an application under Section 72 of the Bombay Public Trust Act, 1950.

It was Civil Misc. Application No.11 of 1998, which was decided by the learned District Judge on 29th January, 2000. The said application was allowed in relation to mode of succession and payment of membership fee. The applicants were not party to both the proceedings, i.e. before the Assistant Charity Commissioner and the learned District Judge at Ratnagiri.

4. According to the applicants, they were not served and no public notice was also published, at the time of framing the scheme under Section 50A of the Bombay Public Trust Act, 1950. The applicants perceived knowledge for the first time on 14th December, 2001.

5. I have also considered another Civil Application No. 2309 of 2006 filed by the present applicants seeking leave of this Court for filing appeal. Reply is filed by the respondent nos.1 to 7, in that application and in that reply it is contended that such knowledge was

attributed and therefore no notice was given while framing the scheme and hence delay is occurred of about 2 years. However, the applicants are seeking modification of the scheme and for setting aside the order passed by the learned District Judge passed under Section 72 of the Bombay Public Trust Act, 1950 in relation to the registered public trust.

6. Having considered the nature of the proceedings and controversies between the parties, as well as the order passed by the learned District Judge, in my view, delay is properly explained and needs to be condoned.

7. In the result, civil application is allowed in terms of paragraph 7(a) and is disposed of, accordingly.

Sd/-

(S.B.DESHMUKH, J.)